



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3003475  
**Applicant Name:** Todd Walton  
**Address of Proposal:** 6561 Phinney Ave N

**SUMMARY OF PROPOSED ACTION**

Land Use Permit to approve a minor communication utility consisting of three panel antennas and two microwave dishes (divided between two canisters) (Clearwire). Project includes one new equipment cabinet all to be located on rooftop<sup>1</sup>.

The following approvals are required:

**Administrative Conditional Use Review** - to allow a minor communication utility to exceed the height limit in a Multi-family Residential Zone pursuant to Seattle Municipal Code (SMC) 23.57.011B.

**SEPA - Environmental Determination** pursuant to SMC 25.05.

**SEPA DETERMINATION:** ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

**BACKGROUND INFORMATION**

**Site Location and Zoning**

The subject property, which is developed with an 11-story apartment building, is located at the southwest corner of N 67<sup>th</sup> St and Phinney Ave N on the west block front of Phinney Ave N. Zoning for the site is Neighborhood-Commercial (NC2.40') and



<sup>1</sup> The proposed minor communication utility does extend more than 15 feet above the rooftop of the building nonconforming as to height.

Multi-Family Residential Lowrise 3 Residential-Commercial (L-3/RC).

### Proposal Description

Clearwire LLC is proposing a rooftop installation of three (3) panel antennas and two (2) microwave antennas and one (1) new equipment cabinet on an existing apartment building. The installation will be shrouded and will rise ten feet higher than the top of the rooftop—a height that achieves coverage objectives established by the applicant<sup>2</sup>.

The applicant submitted a propagation map showing the coverage achieved by locating the antennas at the proposed height. Locating the antennas any lower according to the applicant would result in coverage “gaps” and would necessitate the construction of additional sites.

### Public Comments

The public comment period for this project ended February 15, 2006. The application was deemed complete on January 26, 2006 and notice of application was given on February 2, 2006. DPD received six comment letters regarding this proposal, expressing concerns with the potential health risks from microwave antennas. The comment letters are located within the project file.

### **ANALYSIS -ADMINISTRATIVE CONDITIONAL USE**

Seattle Municipal Code (SMC) 23.57.002 provides that a minor communication utility, as regulated pursuant to SMC 23.57.009, may be permitted in a Lowrise zone as an Administrative Conditional Use when they meet the development standards of SMC 23.57.011C. and the following criteria of SMC 23.51.011B., as applicable.

- 1. The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.*

According to the plans, the antennas will conform to codified development standards, visual impacts and design standards of SMC 23.57.011 and 23.57.016.

The proposed minor communication utility is not likely to be substantially detrimental to the residential character of the residentially zoned area, and the location of the panel antennas and cabling are the least visually intrusive location consistent with effectively providing service and minimizing impacts to the existing neighborhood<sup>3</sup>. The minor communication utility will be integrated into the design of the building and screened to resemble the existing penthouse. The negative

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<sup>2</sup> The base height limit for the L-3 zone is thirty feet measured above existing/finished grade, whichever is lower. An exception to the height limit for minor communication utilities and accessory communication devices are permitted pursuant to SMC 23.57.003 or 23.57.011B.

<sup>3</sup> The applicant has provided photographically simulated evidence suggesting that the visual intrusion would be minor.

impacts to the neighbors and tenants of the host building will likely be minor and personal wireless services in the area will be improved, which will be beneficial to users in the neighborhood.

The antennas will not emit noise. The noise level associated with the radio equipment cabinets is required to be below the ambient level of residential uses allowed within the Multi-family zone.

Traffic impacts are not anticipated other than one service visit per month. The proposal would be compatible with uses allowed in the zone, and since no housing or structure will be removed, the proposal will not result in displacement of residential dwelling units.

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

According to the plans submitted, the proposed height of the antennas will be fully screened from view and is inconspicuous as possible, within the parameters of the SMC, while remaining functionally effective. Therefore, the proposal complies with this criterion.

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

- a.) *The antenna is at least one hundred feet (100') from a MIO boundary, and*
- b.) *The antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay District. Therefore, this criterion does not apply to the subject proposal.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The proposed height of the minor communication utility is ten feet above the rooftop, with a total height for the installation of just over thirty-seven feet above the ground level. Documentation within the MUP file, provided by the applicant, demonstrates the need for the requested height as the minimum necessary for the effective functioning of the minor communication utility; the proposal complies with this criterion.

5. *If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

The proposed minor communication utility will not be a new freestanding transmission tower. Therefore, this criterion does not apply to the subject proposal.

## **SUMMARY**

The proposed project is consistent with the Administrative Conditional Use criteria of the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore will not require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

### **DECISION - ADMINISTRATIVE CONDITIONAL USE**

The Conditional Use application is **CONDITIONALLY APPROVED** as noted below.

### **ANALYSIS – SEPA**

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered. In consideration of these policies, a more detailed discussion of some of the potential impacts is appropriate.

The initial disclosure of the potential impacts from this project was made in the environmental checklist dated January 3, 2006 and annotated by the Land Use Planner. The information in the checklist, the applicant's "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility," supplemental information and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

#### **Short - Term Impacts**

The following temporary or construction-related impacts are expected; decreased air quality due to suspended particulate from building activities and hydrocarbon emissions from construction vehicles and equipment; increased traffic and demand for parking from construction equipment and personnel; increased noise; consumption of renewable and non-renewable resources. These impacts are expected to be very minor in scope and of very short duration considering the installation process. No conditioning pursuant to SEPA is warranted.

#### **Construction and Noise Impacts**

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The initial installation of the antennas and construction of the equipment room may include loud equipment and activities. This construction activity may have an adverse impact on nearby residences. Due to the close proximity of nearby residences, the Department finds that the limitations of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impact policies, (SMC 25.05.675.B) allow the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekday hours between 7:30 a.m. and 6:00 p.m.

#### Long - Term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal, namely increases in demand for energy and increased generation of electromagnetic radiation emission. These long-term impacts are not considered significant or of sufficient adversity to warrant mitigation. However, due to the widespread public concerns expressed about electromagnetic radiation, this impact is further discussed below.

The Federal Communications Commission (FCC) has pre-empted local and state governments from regulating person wireless service facilities on the basis of environment effect of electromagnetic radiation emissions. The FCC, the City and County have adopted standards addressing maximum permissible exposure (MPE) limits for these facilities to ensure the health and safety of the general public. The Seattle-King County Department of Public Health has reviewed hundreds of these sites and found that the exposures fall well below all the maximum permissible exposure (MPE) limits. The Department of Public Health does not believe these utilities to be a threat to public health.

The City is not aware of interference complaints from the operation of other installations from persons operating electronic equipment, including sensitive medical devices (e.g. - pacemakers). The Land Use Code (SMC 23.57.012C2) requires that warning signs be posted at every point of access to the antennas noting the presence of electromagnetic radiation. In the event that any interference was to result from this proposal in nearby homes and businesses or in clinical medical applications, the FCC has authority to require the facility to cease operation until the issue is resolved.

The information discussed above, review of literature regarding these facilities, and the experience of the Departments of Planning and Development and Public Health with the review of similar projects form the basis for this analysis and decision. The Department concludes that no mitigation for electromagnetic radiation emission impacts pursuant to SEPA policies is warranted.

Other long term impacts such as height, bulk and scale, traffic, and air quality are minor and adequately mitigated by the City's existing codes and ordinances. Provided that the proposal is constructed according to approved plans, no further mitigation pursuant to SEPA is warranted.

#### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the

requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).

### **CONDITIONS – ADMINISTRATIVE CONDITIONAL USE**

#### **For the Life of the Permit**

1. Screening shall be integrated with architectural design, material, shape and color of the existing building.

### **CONDITIONS – SEPA**

#### **During Construction**

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

2. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. This condition may be modified by DPD to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: \_\_\_\_\_ (signature on file) Date: June 8, 2006  
Colin R. Vasquez, Senior Land Use Planner

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